

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LOURDES PEREZ-BERKELEY

Plaintiff,

COMPLAINT

-against-

CIGNA GROUP INSURANCE and LIFE  
INSURANCE COMPANY OF NEW YORK,  
Defendants.

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Plaintiff, LOURDES PEREZ-BERKELEY, by her attorneys, McCormick Dunne & Foley, as and for a complaint against the above-captioned defendants, alleges as follows:

**JURISDICTION AND VENUE**

1. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1001, et seq. and specifically 29 U.S.C. 1132(a)(1)(B).
2. Jurisdiction is vested in this Court pursuant to 29 U.S.C. 1132 (c)(1) and (f).
3. Venue is proper pursuant to 29 U.S.C. 1132(c) (2), both because the subject breach took place in the Southern District of New York, and because the plaintiff resides in the Southern District of New York.

**THE PARTIES**

4. Plaintiff, LOURDES PEREZ-BERKELEY, is a natural person and a citizen of the State of New York, residing at 28 High Ridge Road, Mount Kisco, New York.
5. Upon information and belief, at all times hereinafter mentioned, defendants, CIGNA GROUP INSURANCE and LIFE INSURANCE COMPANY OF NEW YORK

were and are either corporations organized and existing under and by virtue of the laws of the State of New York, or foreign corporations duly authorized to transact business in the State of New York.

6. Upon information and belief, at all times hereinafter mentioned, defendants CIGNA GROUP INSURANCE and LIFE INSURANCE COMPANY OF NEW YORK issued and administered an "employee welfare benefit plan" and a "welfare benefit plan," as defined by 29 U.S.C covering LOURDES PEREZ-BERKELEY as an employee of Solomon Smith Barney under Policy number NYK 2260.

7. Upon information and belief, at all times mentioned, defendants, CIGNA GROUP INSURANCE and LIFE INSURANCE COMPANY OF NEW YORK were the "administrators" of the PLAN, as defined by 29 U.S.C. 1002(16)(A).

8. Upon information and belief, at all times hereinafter mentioned, CIGNA GROUP INSURANCE and LIFE INSURANCE COMPANY OF NEW YORK were the "claims administrators" of the PLAN as well as the insurer administrator of the PLAN.

### **BACKGROUND**

9. On a date prior to September 11, 2001, as a benefit of her employment, LOURDES PEREZ-BERKELEY became eligible for long term disability benefits under the PLAN.

10. While covered under the Plan, LOURDES PEREZ-BERKELY became "disabled," as defined by the PLAN.

11. Thereafter, LOURDES PEREZ-BERKELY timely submitted a claim for long term disability benefits under the PLAN.

12. CIGNA GROUP INSURANCE and LIFE INSURANCE COMPANY OF NEW YORK refused to pay benefits under the terms and provisions of the Plan.

13. LOURDES PEREZ-BERKELY timely submitted an administrative appeal challenging the decision not to pay long term disability benefits.

14. By letter dated September 16, 2003, LOURDES PEREZ-BERKELEY's administrative appeal was denied, thereby exhausting her administrative remedies.

**AS AND FOR A FIRST CAUSE OF ACTION**

15. LOURDES PEREZ-BERKELEY repeats and reiterates paragraphs "1" through "14," as if fully set forth at length herein.

16. Both the decision to deny long term disability benefits, and the administrative appeal decision affirming the decision to deny LOURDES PEREZ-BERKELY long term disability benefits, were and are erroneous and in violation of LOURDES PEREZ-BERKELEY's rights under ERISA.

17. Accordingly, defendants are liable to LOURDES PEREZ-BERKELEY for the sum of all long term disability benefits wrongfully withheld from her since the inception of her disability.

18. Additionally, LOURDES PEREZ-BERKELEY is entitled to have her long term disability claim restored, and to receive long term disability benefits on a going-forward basis.

19. Lastly, LOURDES PEREZ-BERKELY is entitled to attorney's fees and costs

pursuant to 29 U.S.C. 1132(g)(1).

**WHEREFORE**, LOURDES PEREZ-BERKELY demands judgment:

- (i) awarding her the sum of all long term disability benefits wrongfully withheld from her, together with prejudgment interest;
- (ii) declaring that she is entitled to have her claim for long term disability benefits restored on a going forward basis;
- (iii) awarding her attorney's fees and costs pursuant to 29 U.S.C. 1132(g)(1); and
- (iv) for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York  
July 25, 2006

Yours, etc.

McCormick Dunne & Foley

By: \_\_\_\_\_  
Joseph P. Altman Jr. (JA1562)

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